

AMENDED IN ASSEMBLY JUNE 22, 1999

AMENDED IN SENATE MAY 3, 1999

SENATE BILL

No. 579

Introduced by Senator Dunn

February 23, 1999

An act to amend Sections 22203, 22251, 22305, 22330, 22467, and 22551 of the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Dunn. Finance lenders.

The California Finance Lenders Law provides for licensing and regulation by the Commissioner of Corporations of persons engaged in the business of making consumer or commercial loans. Under these provisions, a licensed lender generally may not take a deed of trust, mortgage, or lien upon real property as security for a consumer loan if the principal amount of the loan is less than \$5,000.

This bill would provide that a licensed lender may not take a deed of trust, mortgage, or lien upon real property as security for a consumer loan except if the loan is for a bona fide principal amount of \$5,000 or more. This bill would define "bona fide principal amount" for the purpose of determining whether a consumer or commercial loan amount exceeds a regulatory ceiling, as specified.

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22203 of the Financial Code is
2 amended to read:

3 22203. "Consumer loan" means a loan, whether
4 secured by either real or personal property, or both, or
5 unsecured, the proceeds of which are intended by the
6 borrower for use primarily for personal, family, or
7 household purposes. For purposes of determining
8 whether a loan is a consumer loan, the lender may rely on
9 any written statement of intended purposes signed by the
10 borrower. The statement may be a separate statement
11 signed by the borrower, or may be contained in a loan
12 application or other document signed by the borrower.
13 The lender shall not be required to ascertain that the
14 proceeds of the loan are used in accordance with the
15 statement of intended purposes. Nothing in this section
16 shall authorize the taking of real property as security,
17 except as specified in Section 22330.

18 SEC. 2. Section 22251 of the Financial Code is
19 amended to read:

20 22251. Any section that refers to this section does not
21 apply to any loan of the bona fide principal amount
22 specified in the regulatory ceiling provision of that
23 section or more if that provision is not used for the
24 purpose of evading this division. In determining under
25 Section 22250, 22303, or 22304 or any section that refers to
26 this section whether a loan is a loan of a bona fide principal
27 amount of the amount specified in that section or more
28 and whether the regulatory ceiling provision of that
29 section is used for the purpose of evading this division, the
30 following principles apply:

31 (a) If a borrower applies for a loan in a bona fide
32 principal amount of less than the specified amount and a
33 loan to that borrower of a bona fide principal amount of
34 the specified amount or more if made by a licensed
35 finance lender, no adequate economic reason for the
36 increase in the size of the loan exists, and by
37 prearrangement or understanding between the
38 borrower and the licensee a substantial payment is to be

1 made upon the loan with the effect of reducing the bona
2 fide principal amount of the loan to less than the specified
3 amount within a short time after the making of the loan
4 other than by reason of a requirement that the loan be
5 paid in substantially equal periodical installments, then
6 the loan shall not be deemed to be a loan of the bona fide
7 principal amount of the specified amount or more and the
8 regulatory ceiling provisions shall be deemed to be used
9 for the purpose of evading this division unless the loan
10 complies with the other provisions of the section that
11 includes the regulatory ceiling provisions.

12 (b) If a loan made by a licensed finance lender is in a
13 bona fide principal amount of the specified amount or
14 more, the fact that the transaction is in the form of a sale
15 of accounts, chattel paper, goods, or instruments or a lease
16 of goods, or in the form of an advance on the purchase
17 price of any of the foregoing, shall not be deemed to affect
18 the loan or the bona fides of the amount thereof or to
19 indicate that the regulatory ceiling provisions are used for
20 the purpose of evading this division.

21 (c) For the purposes of determining whether the loan
22 amount exceeds a regulatory ceiling, the “bona fide
23 principal amount” shall not be comprised of any charges
24 or any other fees or recompense specified in Sections
25 22200, 22201, *(including, but not limited to, amounts paid*
26 *for insurance of the types specified in Sections 22313 and*
27 *22314)* 22202, 22305, 22316, 22317, 22318, 22319, 22320,
28 22320.5, and 22336. ~~This section~~ *Nothing in this*
29 *subdivision shall be construed to prevent those specified*
30 *charges, fees, and recompense that have been earned and*
31 *remain unpaid in an existing loan from being considered*
32 *as part of the bona fide principal amount of a new loan to*
33 *refinance that existing loan, provided the new loan is not*
34 *made for the purpose of circumventing a regulatory*
35 *ceiling provision. This subdivision is intended to clarify*
36 the meaning of “bona fide principal amount” as used in
37 this division solely for the ~~purpose~~ *purposes* of
38 determining whether the loan amount exceeds a
39 regulatory ceiling, and is not intended to affect the
40 meaning of “principal” for any other purpose.

1 SEC. 3. Section 22305 of the Financial Code is
2 amended to read:

3 22305. In addition to the charges authorized by
4 Section 22303 or 22304, a licensee may contract for and
5 receive an administrative fee, which shall be fully earned
6 immediately upon making the loan, with respect to a loan
7 of a bona fide principal amount of not more than two
8 thousand five hundred dollars (\$2,500) at a rate not in
9 excess of 5 percent of the ~~bona fide principal amount~~
10 *principal amount (exclusive of the administrative fee)* or
11 fifty dollars (\$50), whichever is less, and with respect to
12 a loan of a bona fide principal amount in excess of two
13 thousand five hundred dollars (\$2,500), at an amount not
14 to exceed seventy-five dollars (\$75). No administrative
15 fee may be contracted for or received in connection with
16 the refinancing of a loan unless at least one year has
17 elapsed since the receipt of a previous administrative fee
18 paid by the borrower. Only one administrative fee may
19 be contracted for or received until the loan has been
20 repaid in full. For purposes of this section, “bona fide
21 principal amount” shall be determined in accordance
22 with Section 22251.

23 SEC. 4. Section 22330 of the Financial Code is
24 amended to read:

25 22330. No licensee shall take a deed of trust,
26 mortgage, or lien upon real property as security for any
27 loan made under this division, except any lien as is
28 created by law upon the recording of an abstract of
29 judgment. This section shall not apply to any loan of a
30 bona fide principal amount of five thousand dollars
31 (\$5,000) or more as determined in accordance with
32 Section 22251.

33 SEC. 5. *Section 22467 of the Financial Code is*
34 *amended to read:*

35 22467. (a) Any section that refers to this section or
36 that is subject to Section 22251 does not apply to any
37 open-end loan of the bona fide principal amount specified
38 in the regulatory ceiling provision of that section or more,
39 or to a duly licensed finance lender in connection with



1 any such loan if that provision is not used for the purpose
2 of evading this division.

3 (b) In determining whether an open-end loan is an
4 open-end loan of a bona fide principal amount specified
5 in any section in this division or more and whether the
6 regulatory ceiling provision of that section is used for the
7 purpose of evading this division, the open-end loan shall
8 be deemed to be for that amount or more if both the
9 following criteria are met:

10 (1) The line of credit is equal to or more than the *bona*
11 *fide principal amount of the* specified amount.

12 (2) The initial advance was equal to or more than the
13 *bona fide principal amount of the* specified amount.

14 (c) A subsequent advance of money of less than the
15 specified amount pursuant to the open-end loan
16 agreement between a borrower and a licensed finance
17 lender shall be deemed to be a loan of a *bona fide*
18 principal amount of the specified amount if the criteria
19 of paragraphs (1) and (2) of subdivision (b) have been
20 met, even though the actual unpaid balance after the
21 advance or at any other time is less than the *bona fide*
22 *principal amount of the* specified amount.

23 (d) Notwithstanding subdivisions (b) and (c), the
24 amount of the line of credit of an unsecured open-end
25 loan shall be the criterion to determine whether an
26 unsecured open-end loan is of a bona fide principal
27 amount or more specified in any section in this division.

28 (e) *For the purposes of determining whether the loan*
29 *amount exceeds a regulatory ceiling, the provisions of*
30 *subdivision (c) of Section 22251 shall apply to open-ended*
31 *loans.*

32 SEC. 6. Section 22551 of the Financial Code is
33 amended to read:

34 22551. In determining whether a loan is a loan of a
35 bona fide principal amount of the specified amount or
36 more, the following principles shall apply:

37 (a) If a borrower applies for a loan in a bona fide
38 principal amount of less than the specified amount and a
39 loan to that borrower of a bona fide principal amount of
40 the specified amount or more is made by a licensed

1 finance lender, no adequate economic reason for the
2 increase in the size of the loan exists, and by
3 prearrangement or understanding between the
4 borrower and the licensee a substantial payment is to be
5 made upon the loan with the effect of reducing the bona
6 fide principal amount of the loan to less than the specified
7 amount within a short time after the making of the loan
8 other than by reason of a requirement that the loan be
9 paid in substantially equal periodical installments, then
10 the loan shall not be deemed to be a loan of the bona fide
11 principal amount of the specified amount or more.

12 (b) A subsequent advance of money of less than a bona
13 fide principal amount of the specified amount pursuant
14 to a revolving or open-end loan agreement or similar
15 agreement between a borrower and a licensed finance
16 lender which gives the borrower the right to draw upon
17 all or any part of the line of credit, or a loan agreement
18 providing for the making of advances to the borrower
19 from time to time up to an aggregate maximum amount
20 which gives the borrower the right to draw all or any part
21 of the total amount, shall be deemed to be a loan of a bona
22 fide principal amount of the specified amount or more if
23 the line of credit or the aggregate maximum amount is a
24 bona fide principal amount of the specified amount or
25 more and the initial advance was a bona fide principal
26 amount of the specified amount or more even though the
27 actual unpaid balance after the advance or at any other
28 time is less than a bona fide principal amount of the
29 specified amount.

30 (c) If a loan made by a licensed finance lender has a
31 bona fide principal amount of the specified amount or
32 more, the fact that the transaction is in the form of a sale
33 of accounts, chattel paper, goods, or instruments, or a
34 lease of goods, or in the form of an advance on the
35 purchase price of any of the foregoing, shall not be
36 deemed to affect the bona fides of the amount thereof.

37 (d) For the purposes of this section, “the specified
38 amount” means five thousand dollars (\$5,000).

39 (e) For the purposes of determining whether the loan
40 amount exceeds a regulatory ceiling, the “bona fide

1 principal amount” shall not be comprised of any charges
2 or any other fees or recompense specified in Sections
3 22500, 22501, and 22601. ~~This section~~ *Nothing in this*
4 *subdivision shall be construed to prevent those specified*
5 *charges, fees, and recompense that have been earned and*
6 *remain unpaid in an existing loan from being considered*
7 *as part of the bona fide principal amount of a new loan to*
8 *refinance that existing loan, provided the new loan is not*
9 *made for the purpose of circumventing a regulatory*
10 *ceiling provision. This subdivision is intended to define*
11 the meaning of “bona fide principal amount” as used in
12 this division solely for the purposes of determining
13 whether the loan amount exceeds a regulatory ceiling,
14 and is not intended to affect the meaning of “principal”
15 for any other purpose.

